

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

DE

Acushnet Company, a Delaware  
Corporation,

Plaintiff,

v.

City Sports, Inc., a Massachusetts  
corporation, John Does 1-100 and XYZ  
Corporations 1-100,

Defendants.

§ CAUSE NO. \_\_\_\_\_

§

§

§ Declaration of William Morgan

§

§ FILED UNDER SEAL PURSUANT  
§ TO 15 U.S.C. § 1116

§

§

§

§

§

§

§

§

§

§

William E. Morgan hereby makes the following declaration under penalty of perjury pursuant to 28 U.S.C. §1746, as follows:

1. I am the Senior Vice President of Golf Ball Research and Development for Plaintiff Acushnet Company ("Acushnet"). I am over the age of twenty-one (21) years, suffer no legal or mental disabilities, and am fully competent to make this declaration. I make this declaration based upon my personal knowledge and upon review of files of plaintiff under my direction and control.

2. I submit this Declaration in support of Plaintiff's *ex parte* Application for Temporary Restraining Order, Expedited Discovery Order, and Order to Show Cause for a Preliminary Injunction and the Application to Seal File Pending Hearing on *Ex Parte* Temporary Restraining Order against City Sports, Inc. and John Does 1-100 and XYZ Corporations 1-100 (collectively "Defendant").

3. I graduated from the University of Dallas in 1977 with a Bachelor of Science in Biochemistry. I have been employed in the golf industry since 1982, first with the Ben Hogan Company of the AMF Corporation and, from 1986 to the present, with Acushnet Company. In my position as Senior Vice President of Golf Ball Research and Development, I have had direct responsibility for the development and introduction of more than 25 different models of TITLEIST® and PINNACLE® golf balls. I am familiar with Titleist Pro V1® golf balls.

**Defendants' Counterfeit Golf balls**

4. **City Sports, Inc. Counterfeiting.** On or about April 25, 2005, Roland Giroux delivered to me one (1) package of golf balls marketed as "Titleist Pro V1" purchased by Mark Brostowski from City Sports, Inc. at 480 Boylston Street, Boston, Massachusetts 02116. I was asked to determine if the City Sports, Inc. golf balls were genuine. I determined that the City Sports, Inc. golf balls were not genuine Titleist Pro V1 golf balls based upon the following:

A. I immediately noticed the subject balls did not appear to be painted, urethane covered golf balls as are genuine Pro V1.

B. On closer examination I found the subject balls to have cover molding artifacts consistent with a retractable pin injection molding process used for thermoplastic covers but not used to form the thermoset outer urethane cover of genuine Pro V1 golf balls.

C. I then cut one of the subject balls in half and determined conclusively that it was not a genuine Titleist Pro V1®. Titleist Pro V1®, by design, incorporates a large core and both thin inner and thin outer cover layers. The subject ball has both a thick

inner cover layer and a thick outer cover layer, inconsistent with the Titleist Pro V1® design. Furthermore, the subject ball has a smaller diameter pink core very different from the larger diameter dark blue core found in the genuine Titleist Pro V1®.

5. Looking at the packaging of the subject balls I noticed that it too was not genuine Titleist Pro V1® packaging. Notably, the image of the ball on the bottom is blurry and tinted to a different color. On the top end panel of the box, the ampersand located within the statement “CONFORMS WITH USGA AND R&A RULES” appears superscripted, which is inconsistent with genuine Titleist Pro V1® packaging.

6. Attached hereto as **Exhibit “1”** is a photograph of a side by side comparison of the exterior of a genuine Titleist Pro V1 golf ball and the City Sports, Inc. counterfeit golf ball that I inspected.

7. Attached hereto as **Exhibit “2”** is a photograph of a side by side comparison of the interior of a genuine Titleist Pro V1 golf ball and the City Sports, Inc. counterfeit golf ball that I inspected.

#### **Other Counterfeit Golf balls Found in the United States**

8. **The Andersons, Inc. Counterfeiting.** On or about May 10, 2005, Roland Giroux delivered to me one (1) package of golf balls marketed as “Titleist Pro V1” purchased by Bob Kolva at The Andersons, Inc., Maumee, Ohio store.

9. In addition, on or about May 16, 2005, Roland Giroux personally delivered to me one (1) dozen golf balls purchased from The Andersons, Inc. at 5800 Alshire Road, Columbus, Ohio (Brice Location). I was asked to determine if both sets of The Andersons, Inc. golf balls were genuine. I determined that both sets of The

Andersons, Inc. golf balls were not genuine Titleist Pro V1 golf balls based upon the following:

A. I immediately noticed the subject balls did not appear to be painted, urethane covered golf balls as are genuine Pro V1.

B. On closer examination, I found the subject balls to have cover molding artifacts consistent with a retractable pin injection molding process used for thermoplastic covers but not used to form the thermoset outer urethane cover of genuine Pro V1 golf balls.

C. I then cut one of the subject balls in half and determined conclusively that it was not a genuine Titleist Pro V1®. Titleist Pro V1®, by design, incorporates a large core and both thin inner and thin outer cover layers. The subject ball has both a thick inner cover layer and a thick outer cover layer, inconsistent with the Titleist Pro V1® design. Furthermore, the subject ball has a smaller diameter pink core very different from the larger diameter dark blue core found in the genuine Titleist Pro V1®.

10. Looking at the packaging of the subject balls I noticed that it too was not genuine Titleist Pro V1® packaging. Notably, the image of the ball on the bottom is blurry and tinted to a different color. On the top end panel of the box, the ampersand located within the statement “CONFORMS WITH USGA AND R&A RULES” appears superscripted, which is inconsistent with genuine Titleist Pro V1® packaging.

11. Attached hereto as **Exhibit “3”** is a photograph of a side by side comparison of the exterior of a genuine Titleist Pro V1 golf ball and one of The Andersons, Inc. counterfeit golf balls that I inspected.

12. Attached hereto as **Exhibit “4”** is a photograph of a side by side comparison of the interior of a genuine Titleist Pro V1 golf ball and one of The Andersons, Inc. counterfeit golf ball that I inspected.

13. **G. I. Joe’s, Inc. Counterfeiting.** On or about April 29, 2005, Roland Giroux, Senior Attorney for Acushnet Company (“Acushnet”) delivered to me one (1) package of golf balls purchased by Tim Ross from G.I. Joe’s, Inc. at 25928 S. E. 104<sup>th</sup> Ave., Kent, Washington 98032.

14. On or about May 17, 2005, I received from Roland Giroux one (1) set of golf balls he had received from Investigative Network, Inc., which had been purchased from G. I. Joe’s, Inc. located at 120 31<sup>st</sup> Ave. SE, Puyallup, WA 98374. I was asked to determine if both sets of golf balls purchased at G. I. Joe’s, Inc. were genuine Titleist Pro V1 golf balls. I determined that both sets of golf balls purchased at G. I. Joe’s, Inc. were not genuine Titleist Pro V1 golf balls based upon the following:

A. I immediately noticed the subject balls did not appear to be painted, urethane covered golf balls as are genuine Pro V1.

B. On closer examination, I found the subject balls to have cover molding artifacts consistent with a retractable pin injection molding process used for thermoplastic covers but not used to form the thermoset outer urethane cover of genuine Pro V1 golf balls.

C. I then cut one of the subject balls in half and determined conclusively that it was not a genuine Titleist Pro V1®. Titleist Pro V1®, by design, incorporates a large core and both thin inner and thin outer cover layers. The subject ball has both a thick inner cover layer and a thick outer cover layer, inconsistent with the Titleist Pro V1®



design. Furthermore, the subject ball has a smaller diameter pink core very different from the larger diameter dark blue core found in the genuine Titleist Pro V1®.

15. Looking at the packaging of the subject balls I noticed that it too was not genuine Titleist Pro V1® packaging. Notably, the image of the ball on the bottom is blurry and tinted to a different color. On the top end panel of the box, the ampersand located within the statement "CONFORMS WITH USGA AND R&A RULES" appears superscripted, which is inconsistent with genuine Titleist Pro V1® packaging.

16. Attached hereto as **Exhibit "5"** is a photograph of a side by side comparison of the exterior of a genuine Titleist Pro V1 golf ball and a G. I. Joe's, Inc. counterfeit golf ball that I inspected.

17. Attached hereto as **Exhibit "6"** is a photograph of a side by side comparison of the interior of a genuine Titleist Pro V1 golf ball and a G. I. Joe's, Inc. counterfeit golf ball that I inspected.

18. **Bob Kislin's Outdoor Sports Counterfeiting.** On May 5, 2005, Mr. Giroux personally delivered to me one (1) dozen golf balls purchased from Bob Kislin's Outdoor Sports by Dave Lewis. I was to determine if the subject balls were genuine Titleist Pro V1 golf balls. I determined that the subject balls were not genuine Titleist Pro V1 golf balls based upon the following:

A. I immediately noticed the subject balls did not appear to be painted, urethane covered golf balls as are genuine Pro V1.

B. On closer examination, I found the subject balls to have cover molding artifacts consistent with a retractable pin injection molding process used for thermoplastic

covers but not used to form the thermoset outer urethane cover of genuine Pro V1 golf balls.

C. I then cut one of the subject balls in half and determined conclusively that it was not a genuine Titleist Pro V1®. Titleist Pro V1®, by design, incorporates a large core and both thin inner and thin outer cover layers. The subject ball has both a thick inner cover layer and a thick outer cover layer, inconsistent with the Titleist Pro V1® design. Furthermore, the subject ball has a smaller diameter pink core very different from the larger diameter dark blue core found in the genuine Titleist Pro V1®.

19. Looking at the packaging of the subject balls I noticed that it too was not genuine Titleist Pro V1® packaging. Notably, the image of the ball on the bottom is blurry and tinted to a different color. On the top end panel of the box, the ampersand located within the statement “CONFORMS WITH USGA AND R&A RULES” appears superscripted, which is inconsistent with genuine Titleist Pro V1® packaging.

20. Attached hereto as **Exhibit “7”** is a photograph of a side by side comparison of the exterior of a genuine Titleist Pro V1 golf ball and the Bob Kislin’s Outdoor Sports counterfeit golf ball that I inspected.

21. Attached hereto as **Exhibit “8”** is a photograph of a side by side comparison of the interior of a genuine Titleist Pro V1 golf ball and the Bob Kislin’s Outdoor Sports counterfeit golf ball that I inspected.

22. **Kings of Golf, Inc., d/b/a KG Golf Counterfeiting.** On or about April 15, 2005, Roland Giroux delivered to me one (1) dozen golf balls, which were marked as “Titleist Pro V1” golf balls, which Jimmy Senger had purchased from the Academy Sports and Outdoors store located at 1501 West State Highway 114, Grapevine, TX

76051. Academy Sports and Outdoors' supplier of these golf balls was Kings of Golf, Inc., d/b/a KG Golf ("KG Golf"). I was to determine if the subject balls were genuine Titleist Pro V1 golf balls. I determined that the subject balls were not genuine Titleist Pro V1 golf balls based upon the following:

A. I immediately noticed the subject balls did not appear to be painted, urethane covered golf balls as are genuine Pro V1.

B. On closer examination, I found the subject balls to have cover molding artifacts consistent with a retractable pin injection molding process used for thermoplastic covers but not used to form the thermoset outer urethane cover of genuine Pro V1 golf balls.

C. I then cut one of the subject balls in half and determined conclusively that it was not a genuine Titleist Pro V1®. Titleist Pro V1®, by design, incorporates a large core and both thin inner and thin outer cover layers. The subject ball has both a thick inner cover layer and a thick outer cover layer, inconsistent with the Titleist Pro V1® design. Furthermore, the subject ball has a smaller diameter pink core very different from the larger diameter dark blue core found in the genuine Titleist Pro V1®.

23. Looking at the packaging of the subject balls I noticed that it too was not genuine Titleist Pro V1® packaging. Notably, the image of the ball on the bottom is blurry and tinted to a different color. On the top end panel of the box, the ampersand located within the statement "CONFORMS WITH USGA AND R&A RULES" appears superscripted, which is inconsistent with genuine Titleist Pro V1® packaging.



24. Attached hereto as **Exhibit "9"** is a photograph of a side by side comparison of the exterior of a genuine Titleist Pro V1 golf ball and the Academy Sports and Outdoors counterfeit golf ball, which was obtained from K G Golf, that I inspected.

25. Attached hereto as **Exhibit "10"** is a photograph of a side by side comparison of the interior of a genuine Titleist Pro V1 golf ball and the Academy Sports and Outdoors counterfeit golf ball, which was obtained from K G Golf, that I inspected.

26. **Cam Golf Counterfeiting.** On or about May 12, 2005, Roland Giroux personally delivered to me one (1) package of golf balls purchased by Jimmy Hilton from the Scheels All Sports, Inc., 101 Jordon Creek Parkway, Building 4000, Des Moines, Iowa 50266. Scheels All Sports, Inc.'s supplier of these particular golf balls was Cam Golf ("Cam Golf").

27. On April 8, 2005, I received from Investigative Network, Inc. one (1) dozen Pro V1's that his company purchased from Scheels All Sports, Inc. at 300 S. 24<sup>th</sup> St. West, Billings, Montana 59102. Scheels All Sports, Inc.'s supplier of these particular golf balls was Cam Golf. I was asked to determine if both sets of Scheels All Sports, Inc. golf balls were genuine Titleist Pro VI® golf balls. I determined that both sets of the Scheels All Sports, Inc. golf balls were not genuine Titleist Pro V1 golf balls based upon the following:

A. I immediately noticed the subject balls did not appear to be painted, urethane covered golf balls as are genuine Pro V1.

B. On closer examination, I found the subject balls to have cover molding artifacts consistent with a retractable pin injection molding process used for thermoplastic

covers but not used to form the thermoset outer urethane cover of genuine Pro V1 golf balls.

C. I then cut one of the subject balls in half and determined conclusively that it was not a genuine Titleist Pro V1®. Titleist Pro V1®, by design, incorporates a large core and both thin inner and thin outer cover layers. The subject ball has both a thick inner cover layer and a thick outer cover layer, inconsistent with the Titleist Pro V1® design. Furthermore, the subject ball has a smaller diameter pink core very different from the larger diameter dark blue core found in the genuine Titleist Pro V1®.

28. Looking at the packaging of the subject balls I noticed that it too was not genuine Titleist Pro V1® packaging. Notably, the image of the ball on the bottom is blurry and tinted to a different color. On the top end panel of the box, the ampersand located within the statement "CONFORMS WITH USGA AND R&A RULES" appears superscripted, which is inconsistent with genuine Titleist Pro V1® packaging.

29. Attached hereto as **Exhibit "11"** is a photograph of a side by side comparison of the exterior of a genuine Titleist Pro V1 golf ball and a Scheels All Sports, Inc. counterfeit golf ball, which was obtained from Cam Golf, that I inspected.

30. Attached hereto as **Exhibit "12"** is a photograph of a side by side comparison of the interior of a genuine Titleist Pro V1 golf ball and a Scheels All Sports, Inc. counterfeit golf ball, which was obtained from Cam Golf that I inspected.

31. **James Racaniello Counterfeiting on EBAY.** On or about February 18, 2005, Roland Giroux delivered to me one (1) package of the golf balls purchased by Kent Bergstrom from James Racaniello doing business as "hooverave" on EBAY. I was to determine if the subject balls were genuine Titleist Pro V1 golf balls. I determined that

the James Racaneillo doing business as “hooverave” golf balls were not genuine Titleist Pro V1 golf balls based upon the following:

A. I immediately noticed the subject balls did not appear to be painted, urethane covered golf balls as are genuine Pro V1.

B. On closer examination, I found the subject balls to have cover molding artifacts consistent with a retractable pin injection molding process used for thermoplastic covers but not used to form the thermoset outer urethane cover of genuine Pro V1 golf balls.

C. I then cut one of the subject balls in half and determined conclusively that it was not a genuine Titleist Pro V1®. Titleist Pro V1®, by design, incorporates a large core and both thin inner and thin outer cover layers. The subject ball has both a thick inner cover layer and a thick outer cover layer, inconsistent with the Titleist Pro V1® design. Furthermore, the subject ball has a smaller diameter pink core very different from the larger diameter dark blue core found in the genuine Titleist Pro V1®.

32. Looking at the packaging of the subject balls I noticed that it too was not genuine Titleist Pro V1® packaging. Notably, the image of the ball on the bottom is blurry and tinted to a different color. On the top end panel of the box, the ampersand located within the statement “CONFORMS WITH USGA AND R&A RULES” appears superscripted, which is inconsistent with genuine Titleist Pro V1® packaging.

33. Attached hereto as **Exhibit “13”** is a photograph of a side by side comparison of the exterior of a genuine Titleist Pro V1 golf ball and a James Racaniello doing business as “hooverave” golf ball that I inspected.

34. Attached hereto as **Exhibit "14"** is photograph of a side by side comparison of the interior of a genuine Titleist Pro V1 golf ball and a James Racaniello doing business as "hooverave" golf ball that I inspected.

35. **United Kingdom Seizure** On March 1, 2005, Roland Giroux delivered to me one (1) dozen golf balls seized by United Kingdom, HM Customs and Excise Law Enforcement on March 1, 2005 (their report referencing that importer bought the golf balls off the internet from James Racaniello). I was to determine if the seized balls were genuine Titleist Pro V1 golf balls. I determined that the seized golf balls were not genuine Titleist Pro V1 golf balls based upon the following:

A. I immediately noticed the subject balls did not appear to be painted, urethane covered golf balls as are genuine Pro V1.

B. On closer examination, I found the subject balls to have cover molding artifacts consistent with a retractable pin injection molding process used for thermoplastic covers but not used to form the thermoset outer urethane cover of genuine Pro V1 golf balls.

C. I then cut one of the subject balls in half and determined conclusively that it was not a genuine Titleist Pro V1®. Titleist Pro V1®, by design, incorporates a large core and both thin inner and thin outer cover layers. The subject ball has both a thick inner cover layer and a thick outer cover layer, inconsistent with the Titleist Pro V1® design. Furthermore, the subject ball has a smaller diameter pink core very different from the larger diameter dark blue core found in the genuine Titleist Pro V1®.


D. Looking at the packaging of the subject balls I noticed that it too was not genuine Titleist Pro V1® packaging. Notably, the image of the ball on the bottom is blurry and tinted to a different color. On the top end panel of the box, the ampersand located within the statement “CONFORMS WITH USGA AND R&A RULES” appears superscripted, which is inconsistent with genuine Titleist Pro V1® packaging.

E. Attached hereto as **Exhibit “15”** is a photograph of a side by side comparison of the exterior of a genuine Titleist Pro V1 golf ball and a golf ball seized by United Kingdom, HM Customs and Excise Law Enforcement that I inspected.

F. Attached hereto as **Exhibit “16”** is a photograph of a side by side comparison of the interior of a genuine Titleist Pro V1 golf ball and a golf ball seized by United Kingdom, HM Customs and Excise Law Enforcement that I inspected.

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 23, 2005.

FURTHER DECLARANT SAYETH NOT.

  
\_\_\_\_\_  
William E. Morgan





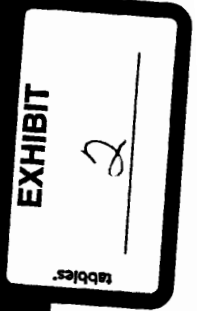
0024

EXHIBIT

1

tabbles









0026

EXHIBIT

3

tabbles



EXHIBIT

4

tabbles









EXHIBIT

6

tabbles



EXHIBIT  
7

tabbies



EXHIBIT

8

tabbles



EXHIBIT

9

tabbles





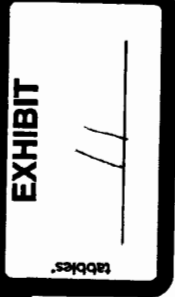
001

EXHIBIT

10

Tables







EXHIBIT

12

tabbles

0019



EXHIBIT  
13

tabbles®





EXHIBIT  
14

tabbles



0020



tabbles



EXHIBIT

16

tabbies